

46 Am. Jur. 2d Judges § 33

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Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Powers and Duties

B. Successor Judges

§ 33. Successor judge changing findings of fact and conclusions of law

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[Power of Successor or Substituted Judge, in Civil Case, to Render Decision or Enter Judgment on Testimony Heard by Predecessor, 84 A.L.R.5th 399](#)

[Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor, 51 A.L.R.5th 747](#)

Allowing a successor judge to vacate and annul a finding of fact made by the trial judge is generally considered improper, because it would permit the successor to grant a new trial.¹ In cases tried without a jury, a party litigant is entitled to a decision on the facts by a judge who heard and saw the witnesses, and a deprivation of that right constitutes a denial of due process.² However, where the successor judge is not required to weigh conflicting evidence or determine the credibility of witnesses, but can resolve the issues on questions of law, or on evidence not in conflict, the successor does not exceed the successor's authority or abuse discretion by exercising the same authority as could the judge who tried the case.³ A successor judge did not abuse discretion by revising a recused judge's interlocutory findings to correspond with the successor judge's findings in an earlier case involving substantially similar facts where, for ERISA purposes, the retiree concessions at issue in the case at bar and those at issue in the earlier case were materially the same, so that the two cases involved substantially similar facts.⁴

Where nothing remains to be accomplished but the entry of the judgment, the successor of the judge who tried the case may make changes in the conclusions of law upon the facts found.⁵

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Footnotes

- 1 Pratt v. Gerber, 330 So. 2d 552 (Fla. 3d DCA 1976); State ex rel. Harp v. Vanderburgh Circuit Court, 227 Ind. 353, 85 N.E.2d 254, 11 A.L.R.2d 1108 (1949).
- 2 Paulson v. Meinke, 352 N.W.2d 191 (N.D. 1984).
- 3 Exxon Corp. v. U.S., 931 F.2d 874 (Fed. Cir. 1991).
- 4 Stoffels ex rel. SBC Telephone Concession Plan v. SBC Communications, Inc., 677 F.3d 720, 82 Fed. R. Serv. 3d 631 (5th Cir. 2012).
- 5 Anderson v. Dewey, 82 Idaho 173, 350 P.2d 734 (1960).

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